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June 1, 2011

Todd A. Del Frate
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Title 27 Compliance and Enforcement Unit
California Regional Water Quality Control Board
Central Valley Region
11020 Sun-Center Drive, Suite 200
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RE: Dellar Property Clean-Up and Abatement Order
Matter ID 10-7247

Mr. Del Frate:

This letter is in response to your letter dated May 25, 2011 addressing the status of requested information to comply with the Clean-up and Abatement order (CAO) for the Dellar Property and to the May 31, 2011 letter from the Dellar Trust, responding to your request for more information on what work can be completed while waiting to find out if the City receives the grant from CALRECYCLE.

Unfortunately, because the Trust unilaterally submitted an alternative closure plan in January and agreed to take the lead on the project, the City has been somewhat at their mercy and is becoming very concerned that the Trust's inability to convey the appropriate information to the Board will negatively impact the City's request for an extension to receive and use extremely valuable grant funds, and be subject to fines and penalties issued by the Water Board. Needless to say, this is extremely frustrating for the City.

When meeting with the Water Board last January, the Dellar Trust presented an alternative closure plan to avoid completing a Habitat Conservation Plan (HCP) due to the finding of Elder Berry Bushes on the property. This plan was presented with no review or consultation with the City of Sacramento. The City still has many questions regarding this

alternative plan, but agreed to allow the Dellar Trust to take the lead on the implementation of the plan.

The chronology of events since the January meeting is outlined below:

- In January the Trust and the City met with Water Board staff where the alternative closure plan was presented. Up until that time the City of Sacramento had not seen the alternative plan. Due to the timeline in which the work needed to be completed, the City agreed to let the Dellar Trust take the lead on design and implementation of the alternative closure plan.
- At the January meeting the Water Board staff asked for an alternative closure work plan showing completion of the project no later than summer of 2011.
- In a letter dated January 13, 2011, Kleinfelder Engineering submitted a work plan for the alternative closure plan. This included field investigation completed by March 9, 2011; final closure plan submitted by April 25, 2011; and final closure of the Dellar Landfill by October 5, 2011.
- In early May the City and the Trust met with the Water Board to discuss progress to date and request a one-year extension beyond the above schedule in order to be eligible for a grant from CALRECYCLE. Tim Crandall, the engineer for Dellar Trust was not available to attend the meeting due to a family emergency. At the meeting the Water Board asked about the status of the final closure plan that was past due. The Trust stated they would talk to their engineer and get the completed plan to the Water Board immediately. They had not completed the final closure plan due to discoveries of waste outside the boundaries of the Dellar Trust land and wanted direction on how to address the waste and confirmation their plan to not fill in around the Elder Berry bushes was satisfactory to the Water Board.
- At the May meeting the Water Board asked for two deliverables:
 - a) A copy of the grant submitted by the City to CALRECYCLE. The City delivered a copy of the grant to Water Board on May 16, 2011.
 - b) A work plan showing what tasks included in the closure plan could be completed prior to knowing if the City receives the \$720,000 matching grant from CALRECYCLE. It was agreed this is the Dellar Trust's responsibility. To date the City has received reports the Dellar Trust's attorney is unable to speak with their engineer to respond to this request.

As a co-responsible party named in the CAO, the City is unable to move forward without the cooperation of the Dellar Trust, the land owner and as such the lead on the alternative closure plan. The City does not agree with the need to address the waste found off site and outside the boundaries of the Dellar Trust property at this time. This will only delay the project further and add cost due to required grading amendments to the additional plan and added cost to the closure work due to more area to be covered and graded.

As stated in an earlier meeting, the City cannot take the lead on the alternative closure plan. It was not our engineer who designed the plan and our procedures will not allow us to meet the proposed schedule. For this reason we ask the Water Board to refrain from subjecting the

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City to fines and penalties for not complying with the amended closure schedule developed by the Dellar Trust.

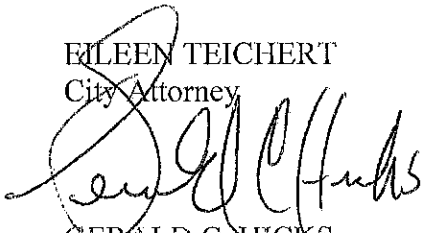
As you know, the City had prepared a final design for the closure and was prepared to award a construction contract last spring (May 2010). Unfortunately, just as the City was prepared to award the contract, elderberry bushes were identified on the Dellar property. In response to the directive of the Department of U.S. Fish & Wildlife, the City advised the Water Board and the Dellar Trust that an HCP was required. The City proceeded to obtain a work plan from its consultant, SCS at a cost of \$100,000. Presumably concerned about the cost of the HCP, the time under which the property would be unavailable and the devaluation of their property, the Trust revealed a revised conceptual design at a Water Board meeting in January 2011. The revised design had not been provided to the City prior to that meeting.

In sum, despite the absence of any financial contribution from the Trust – other than the unfinished revised closure plan, the City has made every effort to comply substantively and temporally with the CAO.

For the reasons stated above the City asks the Water Board to grant the one-year extension so that if received the grant funds from CALRECYCLE can be used to reduce the cost of construction and to refrain from levying fines and/or penalties that will add to the cost. As stated previously, the City is balancing a \$39 million deficit and any additional cost will only add to the financial difficulties of the City.

Sincerely,

EILEEN TEICHERT
City Attorney



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Senior Deputy City Attorney

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